HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.123 of 2005

JUDGMENT

The instant appeal is preferred by the petitioners having got dissatisfied with the award of Rs.4,76,000/- as compensation, as against the claim of Rs.12,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by the order dated 14.12.2004 in MVOP No.473 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–III Additional District Judge, Kakinada.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal and Bonam Bhaskararao, who died in the accident, as 'deceased'.

3. The facts, in brief, are that on 02.12.2001, one Bhaskararao, who is the husband of the first petitioner and the father of the second petitioner, boarded a bus bearing No.AP 11 U 4560 at Hyderabad to go to Kakinada and at 11.00 PM, when the bus reached Tekumatla near Suryapet, Nalgonda District, since the first respondent, driver of the said bus, driven it in a rash and negligent manner and dashed against a lorry bearing No.AEO 1876, which was carrying iron rods, the said Bhaskararao died instantly. The Station House Officer, Suryapet, registered a case against the driver of the bus. The petitioners claim that the said Bhaskararao was 53 years old drawing Rs.11,854-22ps as salary per month as Supervisor in District Cooperative Central Bank, Kakinada, at the time of accident. They were totally dependants on the earnings of the deceased. Respondents 1 and 2 are driver

and owner of the bus in which the deceased was travelling at the relevant time and respondent No.3 is the insurer. Respondents 4. 5 and 6 are driver, owner and insurer of the lorry bearing No.AEO 1876. Hence, claiming joint and several liability against respondents 1 to 6, the instant claim was laid.

4. Before the Tribunal, the driver and owner of the bus as well as the lorry, who are respondents 1,2,4 and 5 respectively, remained *ex parte.* The 3rd and 6th respondents being the insurers of the vehicles are one and the same company i.e., M/s.Oriental Insurance Company represented by its Divisional Manager, Tanuku. Counters were filed opposing the claim requiring the petitioners to prove the various allegations levelled against them reserving their right to seek protection u/s.147 149 and 170 of the Act and sought to dismiss the petition.

5. The Tribunal framed three issues about the responsibility for the accident. During enquiry, the first petitioner examined herself as P.W.1 and also examined one Aketi Suryanarayana, an eyewitness, as P.W.2 and marked Exs.A1 to A6 to substantiate their claim. On behalf of the insurance company, its Manager was examined as R.W.1 and the Assistant General Manager of DCC Bank, Kakinada, was examined as R.W.2 and Exs.B1 and B2 were marked on behalf of the third respondent.

6. The Tribunal, basing on the evidence of P.Ws.1 and 2 and Exs.A1 to A4, held that the accident had occurred due to rash and negligent driving of the bus driven by the first respondent. On Issue No.2, the Tribunal, basing on Ex.A6-Salary Certificate, taken the net salary of the deceased at Rs.4,245-52ps and included the loan amount of Rs.5,250/-and thus, taken the monthly income of

the deceased at Rs.9,495-52 ps., rounding it off to Rs.9,500/-per month, deducted Rs.3,167/-towards 1/3rd towards his personal expenses and applied multiplier '6' taking the age of the deceased as 53 years and arrived the loss of dependency at Rs.4,56,000/-. The Tribunal also granted Rs.15,000/-towards loss of consortium and Rs.5,000/-towards transportation of dead body and funeral expenses. Thus, a sum of Rs.4,76,000/-was granted as compensation with interest at 9% per annum.

7. Thus, it is the above mentioned order, which is under challenge, since the petitioners got dissatisfied with the compensation awarded by the Tribunal. They stated in the grounds of appeal that the Tribunal ought to have taken the monthly salary of the deceased at Rs.11,854-22ps as per Ex.A6, but not Rs.9,500/- and ought to have applied multiplier '11' as against '6' and sought to grant the balance amount.

8. Heard Smt P. Anjana Devi, learned counsel for the appellants. The endorsement made would show that the respondents 4 to 6 are not necessary parties. The appeal was dismissed for default against R1, the driver of the bus. Despite service of notice on respondents 2 and 3, the owner and the insurer of bus, none represents them.

9. Perused the order and the evidence on record. The dismissal against respondent No.1 is of no consequence since the request is for enhancement of the compensation and he was remained *ex parte* before the Tribunal and suffered decree. While fastening liability on respondents 1 to 3, the Tribunal dismissed the claim against respondents 4 to 6. The short question involved is, whether the petitioners are entitled to enhancement of the

compensation.

10. Perused Ex.A6 and the evidence of R.W.2, the Assistant General Manager. The deductions from the salary of the deceased as per Ex.A6 are referred to as under;

P.F.	–Rs.	1344-00
Pro.Tax	-	100-00
I.T.	--	800-00
LIC-	--	44-00
GSLIC	--	50-00
Union	--	20-00
Staff CS-		5250-00

So far as Rs.5,250/-towards loan recovery is concerned, the same is added to the income and the Tribunal arrived at Rs.9,500/- towards monthly income of the deceased and worked out the compensation as mentioned above. Absolutely, there is no deviation in that approach by the Tribunal, but only to the extent of multiplier applied by the Tribunal, modification is required to be made in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], which provides the table and the relevant multiplier is '11' for the age group between 51 and 55 years. Since the deceased was 53 years old, the multiplier ''11'' has to be applied. So far as future prospects are concerned, the petitioners herein are not entitled to the future prospects. When the multiplier ''11' is applied, it works out to Rs.8,35,956/-

(Rs.6,333/-X12X11). The Tribunal granted Rs.15,000/-towards loss of consortium and the same is confirmed. So far as loss of estate is concerned, no amount is granted by the Tribunal. Therefore, a sum of Rs.15,000-is granted towards loss of estate and Rs.5,000/- towards funeral expenses as granted by the

Tribunal is confirmed. Since the accident took place nearby Suryapet, the body of the deceased has to be shifted to Kakinada and therefore, towards transportation charges, a sum of Rs.3,000/- is awarded. Thus, the petitioners are totally entitled to a sum of Rs.8,73,956/-. As regards apportionment, the enhanced amount is apportioned as per the apportionment made by the Tribunal.

11. Thus, the claimants are entitled to a total compensation of Rs.8,73,956/- (Rupees eight lakhs seventy three thousand nine hundred and fifty six only) as against Rs.4,76,000/- awarded by the Tribunal, and the same is accordingly granted. The claimants are entitled to interest on the compensation of Rs.4,76,000/-, awarded by the Tribunal, at 9% per annum, and on the enhanced compensation at 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**[2].

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

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A. SHANKAR NARAYANA, J

23rd December, 2014
sj

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[1] **(2009) 6 SCC 121**

[2] **2013ACJ1403 = 2013(4)ALT35**